SBCivil Writ Petition No.1513/2006

Bhagchand & Ors.
vs.
Paras Kumar & Ors.

Date of Order :: 3rd April, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Ranjeet Joshi, for the petitioners.

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Alongwith a suit preferred by plaintiff petitioners for cancellation of trust deed and for permanent injunction, an application under Order 39 Rule 1 and 2 CPC was also filed seeking temporary injunction.

On 7.4.2001 with the consent of the parties to the suit an order passed by the trial court directing the parties to maintain status quo for a limited period which according to plaintiff petitioners was extended time to time. An application was filed by the plaintiff petitioners before the trial court alleging disobedience and breach of injunction by the defendants and certain other persons by changing position of the idols placed at the temple on 14th, 15th and 16th of January, 2005 with a prayer to initiate proceedings under Order 39 Rule 2-A CPC.

On 31.1.2006 the plaintiff petitioners preferred an application under Order 39 Rule 7 CPC for

inspection of the site by appointing a Commissioner. The application stood rejected by the trial court by an order dated 20.2.2006 being not found bonafide. The trial court while rejecting the application held that the application is filed after a lapse of one year 18 days from the date of alleged change in position of idols, no fact with regard to position of idols as existing prior to 14th, 15th and 16th of January, 2005 is mentioned in the application and, therefore, the application is not bonafide.

The instant petition for writ is preferred by the plaintiff petitioners giving challenge to the order dated 20.2.2006.

Learned counsel for the petitioners while giving challenge to the order impugned urged that delay in filing an application under Order 39 Rule 7 CPC cannot be a reason to be rejected and such an application can be accepted by making an order of inspection at any stage.

Heard counsel for the petitioners and also examined the order impugned.

From reading of the order impugned it is quite clear that the trial court after considering all the facts available reached at the conclusion that the application is not a bonafide one. While exercising

powers under Article 227 of the Constitution of India I do not find any reason to interfere with the order impugned as the counsel for the petitioners failed to satisfy the Court that on what count the order impugned may be termed perverse or the trial court failed to exercise jurisdiction vested with it.

Accordingly, the petition for writ is dismissed.

(GOVIND MATHUR),J.

kkm/ps.